



Scotland Act 1998

1998 CHAPTER 46

PART II

THE SCOTTISH ADMINISTRATION

Ministers and their staff

44 The Scottish Executive.

- (1) There shall be a Scottish Executive, whose members shall be—
 - (a) the First Minister,
 - (b) such Ministers as the First Minister may appoint under section 47, and
 - (c) the Lord Advocate and the Solicitor General for Scotland.
- (2) The members of the Scottish Executive are referred to collectively as the Scottish Ministers.
- (3) A person who holds a Ministerial office may not be appointed a member of the Scottish Executive; and if a member of the Scottish Executive is appointed to a Ministerial office he shall cease to hold office as a member of the Scottish Executive.
- (4) In subsection (3), references to a member of the Scottish Executive include a junior Scottish Minister and “Ministerial office” has the same meaning as in section 2 of the ^{M1}House of Commons Disqualification Act 1975.

Commencement Information

II S. 44(1)(a)(b),(2)-(4) in force at 6.5.1999, s. 42(1)(c) in force at 20.5.1999 by S.I. 1998/3178, art. 2(2)

Marginal Citations

M1 1975 c. 24.

Status: Point in time view as at 01/10/2009.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: Ministers and their staff. (See end of Document for details)

45 The First Minister.

- (1) The First Minister shall be appointed by Her Majesty from among the members of the Parliament and shall hold office at Her Majesty's pleasure.
- (2) The First Minister may at any time tender his resignation to Her Majesty and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.
- (3) The First Minister shall cease to hold office if a person is appointed in his place.
- (4) If the office of First Minister is vacant or he is for any reason unable to act, the functions exercisable by him shall be exercisable by a person designated by the Presiding Officer.
- (5) A person shall be so designated only if—
 - (a) he is a member of the Parliament, or
 - (b) if the Parliament has been dissolved, he is a person who ceased to be a member by virtue of the dissolution.
- (6) Functions exercisable by a person by virtue of subsection (5)(a) shall continue to be exercisable by him even if the Parliament is dissolved.
- (7) The First Minister shall be the Keeper of the Scottish Seal.

46 Choice of the First Minister.

- (1) If one of the following events occurs, the Parliament shall within the period allowed nominate one of its members for appointment as First Minister.
- (2) The events are—
 - (a) the holding of a poll at a general election,
 - (b) the First Minister tendering his resignation to Her Majesty,
 - (c) the office of First Minister becoming vacant (otherwise than in consequence of his so tendering his resignation),
 - (d) the First Minister ceasing to be a member of the Parliament otherwise than by virtue of a dissolution.
- (3) The period allowed is the period of 28 days which begins with the day on which the event in question occurs; but—
 - (a) if another of those events occurs within the period allowed, that period shall be extended (subject to paragraph (b)) so that it ends with the period of 28 days beginning with the day on which that other event occurred, and
 - (b) the period shall end if the Parliament passes a resolution under section 3(1) (a) or when Her Majesty appoints a person as First Minister.
- (4) The Presiding Officer shall recommend to Her Majesty the appointment of any member of the Parliament who is nominated by the Parliament under this section.

47 Ministers.

- (1) The First Minister may, with the approval of Her Majesty, appoint Ministers from among the members of the Parliament.

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- (2) The First Minister shall not seek Her Majesty's approval for any appointment under this section without the agreement of the Parliament.
- (3) A Minister appointed under this section—
 - (a) shall hold office at Her Majesty's pleasure,
 - (b) may be removed from office by the First Minister,
 - (c) may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament,
 - (d) if he resigns, shall cease to hold office immediately, and
 - (e) shall cease to hold office if he ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

48 The Scottish Law Officers.

- (1) It is for the First Minister to recommend to Her Majesty the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland; but he shall not do so without the agreement of the Parliament.
- (2) The Lord Advocate and the Solicitor General for Scotland may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament.
- (3) Where the Lord Advocate resigns in consequence of such a resolution, he shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted, but only for the purpose of exercising his retained functions.
- (4) Subsection (3) is without prejudice to section 287 of the ^{M2}Criminal Procedure (Scotland) Act 1995 (demission of office by Lord Advocate).
- (5) Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.
- (6) In Schedule 2 to the ^{M3}House of Commons Disqualification Act 1975 (Ministerial offices) and Part III of Schedule 1 to the ^{M4}Ministerial and other Salaries Act 1975 (salaries of the Law Officers), the entries for the Lord Advocate and the Solicitor General for Scotland are omitted.

Commencement Information

I2 S. 48(1) in force at 6.5.1999 for certain purposes and 20.5.1999 otherwise and s. 48(2)-(6) in force at 20.5.1999 by [S.I. 1998/3178](#), [art. 2\(2\)](#), [Schs. 3, 4](#)

Marginal Citations

M2 1995 c. 46.

M3 1975 c. 24.

M4 1975 c. 27.

Status: Point in time view as at 01/10/2009.

Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: Ministers and their staff. (See end of Document for details)

49 Junior Scottish Ministers.

- (1) The First Minister may, with the approval of Her Majesty, appoint persons from among the members of the Parliament to assist the Scottish Ministers in the exercise of their functions.
- (2) They shall be known as junior Scottish Ministers.
- (3) The First Minister shall not seek Her Majesty's approval for any appointment under this section without the agreement of the Parliament.
- (4) A junior Scottish Minister—
 - (a) shall hold office at Her Majesty's pleasure,
 - (b) may be removed from office by the First Minister,
 - (c) may at any time resign and shall do so if the Parliament resolves that the Scottish Executive no longer enjoys the confidence of the Parliament,
 - (d) if he resigns, shall cease to hold office immediately, and
 - (e) shall cease to hold office if he ceases to be a member of the Parliament otherwise than by virtue of a dissolution.

50 Validity of acts of Scottish Ministers etc.

The validity of any act of a member of the Scottish Executive or junior Scottish Minister is not affected by any defect in his nomination by the Parliament or (as the case may be) in the Parliament's agreement to his appointment.

51 The Civil Service.

- (1) The Scottish Ministers may appoint persons to be members of the staff of the Scottish Administration.
- (2) Service as—
 - (a) the holder of any office in the Scottish Administration which is not a ministerial office, or
 - (b) a member of the staff of the Scottish Administration,
 shall be service in the Home Civil Service.
- (3) Subsection (1) and the other enactments conferring power to appoint such persons shall have effect subject to any provision made in relation to the Home Civil Service by or under any Order in Council.
- (4) Any Civil Service management function shall be exercisable by the Minister for the Civil Service in relation to the persons mentioned in subsection (2) as it is exercisable in relation to other members of the Home Civil Service; and, accordingly, section 1 of the ^{M5}Civil Service (Management Functions) Act 1992 (delegation of functions by Ministers) shall apply to any such function as extended by this section.
- (5) Any salary or allowances payable to or in respect of the persons mentioned in subsection (2) (including contributions to any pension scheme) shall be payable out of the Scottish Consolidated Fund.
- (6) Section 1(2) and (3) of the ^{M6}Superannuation Act 1972 (delegation of functions relating to civil service superannuation schemes etc.) shall have effect as if references

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to a Minister of the Crown (other than the Minister for the Civil Service) included the Scottish Ministers.

- (7) The Scottish Ministers shall make payments to the Minister for the Civil Service, at such times as he may determine, of such amounts as he may determine in respect of—
- (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the ^{M7}Superannuation Act 1972 to or in respect of persons who are or have been in such service as is mentioned in subsection (2), and
 - (b) any expenses to be incurred in administering those pensions, allowances or gratuities.
- (8) Amounts required for payments under subsection (7) shall be charged on the Scottish Consolidated Fund.
- (9) In this section—

“Civil Service management function” means any function to which section 1 of the ^{M8}Civil Service (Management Functions) Act 1992 applies and which is vested in the Minister for the Civil Service,

“the Home Civil Service” means Her Majesty’s Home Civil Service.

Modifications etc. (not altering text)

- C1** S. 51(2) excluded (15.2.2006) by [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/242\)](#), arts. 1(2), **2(2)**
- C2** S. 51(5) modified (1.7.1999) (*temp.* until 1.4.2000) by [S.I. 1999/441](#), arts. **1(5)**, 22(1)(5)

Commencement Information

- I3** S. 51 wholly in force at 6.5.1999; s. 51 not in force at Royal Assent see s. 130; s. 51(4)(7) in force for certain purposes at 25.1.1999 by [S.I. 1998/3178](#), art. 2(2), **Sch. 1**, s. 51 in force at 6.5.1999 in so far as not already in force by [S.I. 1998/3178](#), art. 2(2), **Sch. 3**

Marginal Citations

- M5** 1992 c. 61.
M6 1972 c. 11.
M7 1972 c. 11.
M8 1992 c. 61.

Status:

Point in time view as at 01/10/2009.

Changes to legislation:

There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: Ministers and their staff.